

Neutral Citation No. - 2025:AHC:115479

RESERVED ON : 10.7.2025

DELIVERED ON : 18.7.2025

Court No. - 78

Case :- CRIMINAL APPEAL No. - 1491 of 1982

Appellant :- Perma Nand And Others

Respondent :- State Of U.P

Counsel for Appellant :- Anubhav Dwivedi,Raj Kumar Tripathi

Counsel for Respondent :- A.G.A.

Hon'ble Anish Kumar Gupta,J.

1. Heard Shri Raj Kumar Tripathi, learned counsel for the appellants and Shri S.K. Ojha, learned A.G.A. for the State.
2. The present appeal has been filed by the appellants, namely, Permanand, Subash Chandra and Ram Tahsil against the judgement and order dated 31.5.1982 in Sessions Trial No. 205 of 1981 (State Vs. Permanand and others) whereby the appellants have been convicted under section 364 IPC and sentenced to five year R.I. with fine of Rs.2000/- with default stipulation.
3. Earlier, vide order dated 9.5.2016 the appeal of appellant no. 3 Ram Tahsil has already been abated. Therefore this court proceeded to decide the appeal of rest of the appellants no. 1 and 2, namely, Permanand and Subash Chandra only.
4. The prosecution story, in brief, is that the informant-Zamat Ali lodged a report on 18.5.1981 stating therein that his son Karam Hussain aged about 16 years was married about 3-4 days ago and in the marriage

he had received a Cycle, wrist watch and a gold ring from his father-in-law. On 17.5.1981 he had gone to Basti to drop his relatives. He did not return to his house in the evening, therefore, he started searching for him, then he came to know that his son was watching a film show from 12.00 to 3.00 pm in the cinema hall and at about 4.00 p.m. three persons had met him near Dakkhin Darwaza and took him somewhere. He tried to search his son till morning but could not find him. He apprehended that those three unknown persons may snatch the aforesaid articles from him and may also kill him. On such written report submitted by the informant an FIR was registered being case crime no. 491/1981 under section 364 IPC and the police started investigation. An informer had informed that the accused/appellants had taken Karam Hussain in the Media Jamua Jungle near Medughat. On such information, a police team was constituted lead by SHO Sri G.K. Tripathi and SI Chattaridhari Singh, and the team raided the spot and arrested the accused persons and recovered the son of the informant alongwith the aforesaid articles. The persons who were arrested disclosed their names as Permanand Pandey, Subhash Tiwari and Ram Tehsil. A cycle, watch and gold ring was also recovered from the possession of the son of the informant-Karam Hussain. One country made pistol alongwith two cartridges 12 bore were recovered from the possession of Permanand and two knives were recovered from Subash Chandra and Ram Tehsil. The police concluded the investigation and filed the charge sheet under section 364 IPC against all the three accused persons. The accused Subash and Ram Tahsil denied the charges stating that the informant is the resident of the same village and there was enmity with regard to cutting of green trees by him, which was objected by the appellants, therefore, they have been falsely implicated. Thus all the accused persons denied the charges and claimed trial.

5. In order to prove its case during the trial, the prosecution has examined six witnesses in all. P.W. 1 Zamat Ali, the informant, P.W. 2 Narvedeshwar Pandey, P.W. 3 Karam Hussain, the victim, P.W. 4

Chattaridhari Singh, the Investigating Officer, P.W. 5 Ganga Prasad and Durga Prasad, who are the witnesses of recovery, however, had not supported the recovery. It is stated that the police has come to their houses and obtained the signature on the recovery memo.

6. P.W. 1 in his deposition has supported the written complaint made to the police and further stated that when his son did not come back from Basti till 4 - 5 pm then he started to search him and came to Basti and he was informed that around 4 - 5 pm his son was talking to accused persons and at that time he came know about the names of three persons and he collected some villagers near the Hospital and started searching of his son whole night but he could be traced out. In the morning he has reported the incident to the police. He has proved the written complaint which was written by Mohd. Iliyas and stated that the contents of written complaint were read over to him by Mohd. Iliyas. He has also proved the *supurdiginama* prepared while handing over the son and all the three articles to him by the police. In his cross examination he stated that the address of the accused persons was not known to him, therefore, he had not searched for them and all through the night he was searching for his son and in the next morning he has reported the matter to the police. After reporting the incident, his son was handed over to him on the same day afternoon. He further stated that after reporting the incident he has not gone anywhere from the police station. His statement was recorded by the police and by the time his statement was recorded he came to know about the names of the accused persons. He had also shown the receipt of Cycle and watch to the police at the time of reporting and those receipts were not shown to any other persons. He further stated that he had met Mohd. Iliyas at a about 6.00 to 6.30 am near the Hospital. At that point of time he has not got scribed the report by Mohd. Iliyas and the same was scribed at about 9 – 10 am. It is wrong to say I got the report scribed by Iliyas after consultation with the police. He admitted that he used to sell the woods by bringing the same from village Khakhua, which is one mile

away from his village. He has denied the suggestion with regard to any dispute with accused Ram Tehsil for bringing the woods from there. When he received his son and the articles from the police he was not accompanied by any Advocate. He further stated that it is wrong to say that Ram Tehsil has been falsely implicated with collusion of the police and Advocate.

7. P.W. 2 Narvedeshwar Pandey is the constable at the police and he has proved the FIR and the written complaint received from the complainant. In his deposition he has stated that receipts of cycle and watch has not been submitted by the informant nor the same was entered into the G.D.

8. P.W. 3- Karam Hussain is the victim and in his deposition he has stated that he is aged about 15 years and he was married on 14.5.1981 and he had gone to drop his relatives to Basti in the morning at about 10.00 am and after dropping the relative at the Bus stand, he had gone to watch cinema from 12.00 to 3.00 pm in the Sunder Talkies. After the show was over he went near Dakkhin Darwaza while he was going on his cycle, all the three accused persons met him. He further stated that he came to know the names of the accused persons later on. Ram Tehsil asked him that his luggage is lying on the roadways and to drop he asked the same to his village Khakhua. He went alongwith all the three accused persons towards roadways bus stand and when he reached near Kisan Inter College, the accused persons started moving towards northern road. When he asked where they are taking him then they told that the luggage is lying over there. Permanand told him not to shout otherwise he will be killed by the country made pistol. Thereafter the accused persons have taken him towards Medughat and thereafter towards the jungle and made him to sit at a place. When he tried to go home the accused persons told him that one more person is about to come and if he will cry he will be killed. He remained in the Jungle whole night. Next day police reached there at about 1 – 2 pm and arrested the accused. A country made pistol

was recovered from the possession of Permanand and two knives were also recovered from the possession of the remaining two accused persons. The police brought the accused and in the evening he was handed over to his father and his articles were also handed over to him after completing some paper formalities. He further stated that he came to know the names of the three accused persons first time in the jungle. From Dakkhin Darwaza till Jungle his cycle was with him. In the said night none had taken food nor the accused persons have taken nor any person even slept the whole night. Medughat is about two miles from the jungle and at that time there was movement of people. He further stated that he had told the Investigating Officer that Cycle was being carried by Ram Tehsil. He stopped at Dakkhin Darwaza on asking by the accused persons and they told that they belong to village Khakkhua and his village was also near that village. He further stated that he was previously known to Ram Tehsil. When he received his articles from the police station Mohd. Iliyas of his village was also present there. The recovery memo regarding country made pistol and knives was prepared **at the police station** by the police in his presence.

9. P.W. 4 Chattaridhari Singh S.I. is the Investigating Officer of the case and in his deposition he has stated that on 18.5.1981 the informant has submitted the written report in his presence and he immediately started the investigation of the case. During investigation SHO Shri J.P. Tripathi has also joined him. When he received the information from the informer that the victim of the incident is in Meedghat forest, he went towards the jungle and on the way they had also taken witnesses Durga Prasad Pandey, Magroo Kahar and Ganga Ram alongwith them. In the Jungle they have apprehended the accused persons and recovered the victim and his cycle, watch and gold ring. On a query made to the accused persons they disclosed their names. On search a country made pistol was recovered from the possession of Permanand and two knives from the possession of Subhash Chandra and Ram Tahsil. Recovery

memo of the victim was prepared on the spot and signed by him. Separate memo was also prepared with regard to the recovery of the country made pistol and the knives. A separate case under 25 Arms Act was registered against accused persons. After recording the statements of the witnesses and preparing the recovery memos alongwith SHO he came to the police station alongwith the victim and the accused persons and made entries in the GD. The father of the victim came to the police station after getting information regarding the recovery of his son and the victim was handed over to the father and separate memo was also prepared. After recording the statement of the SHO and the constables he had went to the place where the accused persons were arrested and also prepared the site plan and he has proved the site plan. In his cross examination he stated that after the registration of the report, statement of informant was taken. While he was asking the informant that he has any apprehension against any person he told that he has not seen any persons. In the presence of Advocate Paras Nath Tripathi, Zamat Ali and Miraz Ahamd the articles recovered during raid were handed over to the victim. He stated that he has not mentioned the date in the G.D. on which he recorded the statements of Zamat Ali, Karam Hussain, Durga Prasad Pandey, Jhhagru and Gangaram.

10. P.W. 5 Ganga Prasad has denied any recovery. He further denied that any statement was recorded by the Investigating Officer.

11. P.W. 6 Durga Prasad has denied the recovery of the victim as well as the articles recovered from the possession of the accused persons though in the memo of recovery he has admitted his signature. He stated that the Investigating Officer has taken his signature on the said document by coming to his place. He denied to have given any statement to the Investigating Officer.

12. Subsequent thereto the statement of accused persons were recorded under section 313 Cr.PC. wherein the accused Permanand has stated that he has falsely been implicated due to enmity by the witnesses and the

police. Accused Subash Chandra has also stated that due to enmity he has been falsely implicated. He further stated that his house is one furlong away from the house of the informant. Informant used to cut green trees which was objected by him and Ram Tehsil, therefore, the informant was inimical to them. Similar statement was made by Ram Tehsil.

13. On the basis of the aforesaid evidence the trial court concluded the trial and convicted the accused persons for the offence under section 364 IPC and sentenced them, as aforesaid.

14. From perusal of the entire evidence, as noted above, it is apparent that out of the three accused persons two accused persons were the resident of the nearby village of the informant. All of them were known to the informant. The victim in his statement has stated that the accused persons first time met him near Dakkhin Darwaza and asked him to bring the luggage which was lying near the roadways to their village Thakua. He stated that he was not knowing the accused persons previously. However, there is contradiction with regard to this also in his statement inasmuch as at one place he stated that accused persons were not known to him previously and on the other hand he stated that he was known to accused Ram Tehsil. As per P.W. 3 all the recovery memos were prepared at the police station but as per the investigating officer the recovery memos were prepared on the spot. The recovery memos have not been supported by the independent witnesses. One of the witnesses of the recovery has stated that the Investigating Officer has taken his signature at his village. Therefore in the entire case the recovery of the victim as well as the articles and the country made pistol and knives becomes doubtful.

15. From the statement of the informant P.W. 1, it is apparent he came to know the names of all the three accused persons in the evening itself despite that no enquiry was made by him at the houses of the accused persons, specifically when the accused persons were known to him. There is contradiction in the statement of P.W. 1 who has stated that after lodging the report he did not go anywhere else and remained in the police

station whereas the Investigating Officer stated that after information of recovery of his son, the informant came and only thereafter his son was handed over to him. Except the Investigating Officer no other member of the police team has stated with regard to the recovery of the victim from the possession and company of the accused persons. From the evidence available on record it is admitted fact that the informant was doing the business of cutting the trees and selling thereof and in this process he used to cut the green trees which was objected by the appellants in connection therewith he was having enmity with the accused persons. It is further evident from the record that in the entire process of kidnapping none of the articles which were assigned as motive for kidnapping were taken away by the accused persons. All the articles were continued to remain with the victim and in the entire incident of kidnapping, as alleged, the victim has not received any injury what so ever. Had the motive of kidnapping being snatching of the articles in possession of the victim, the accused persons as per the prosecution story had ample opportunity through out the night to take articles away and leave the victim. Had there been any motive for ransom for the release of the victim no such attempt to contact the family members of the victim allegedly made by the accused persons. From such circumstances it appears that the entire story of the instant case is fabricated and concocted by the informant in collusion with the Investigating Officer.

16. In view of the above, this court is of the considered opinion that the accused persons were falsely implicated in this case and has been wrongly convicted by the trial court by misreading the evidence in its entirety. Therefore, the instant appeal deserves to be allowed and is hereby **allowed.**

17. The appellants no. 1 and 2 Permanand and Subhash Chandra are hereby acquitted of the charge under section 364 IPC. They are on bail. They need not surrender unless wanted in any other case. Their bail bonds are cancelled and sureties are discharged.

18. Office is directed to send a copy of this order to the trial court concerned within a week and shall return the lower court's record to be consigned.

Order Date :- 18.7.2025

o.k.

(Anish Kumar Gupta, J)